



Docket No. 2001-1043-2  
Appln. No. 10/791,799

REMARKS

Responsive to the restriction requirement imposed in the outstanding Official Action, applicants hereby provisionally elect Group II, claims 1 and 3-6, drawn to methods of making a  $\beta$  (2-6) linked fructan, with traverse. The reasons for traverse are as follows.

In imposing the restriction requirement, the Official Action designates Group I as a method of making a  $\beta$  (2-1) linked fructan, Group II as methods of making a  $\beta$  (2-6) linked fructan, Group III as methods of chemically modifying a fructan and Group IV as chemically oxidized fructan. However, it is respectfully submitted that Groups I-IV are sufficiently closely related that a search and examination of the entire application can be made without a serious burden.

Indeed, at the very least, it is believed that Groups I and II are sufficiently closely related, as evidenced by the fact that they are classified in the same class and subclass in the Official Action. Accordingly, a search for either group would expectedly reveal all prior art relevant to the other group.

The Official Action states that the methods of Groups I and II are independent because the groups would comprise different steps, utilize different products, and produce different results. However, applicants respectfully disagree.

The steps of Groups I and II are not different, as already evidenced by the fact that both groups include the steps

of claim 1: subjecting the same sources (sucrose, raffinose, etc.) under the same conditions to obtain the same mixture.

The products (the bacteria utilized) of Groups I and II are not different, as both are a *Lactobacillus* strain, in particular a *L. reuteri* strain, such as strain 121. As described at page 2, line 30 to page 3, line 3 in the present specification, these bacteria can obtain both a gene encoding a fructosyltransferase capable of producing levan-type fructans ( $\beta$ -2,6 type) and a gene encoding a fructosyltransferase capable of producing insulin-type fructans ( $\beta$ -2,1 type). The particular fructan produced typically depends on the corresponding genes that are active, either by nature, or as the result of genetic modification.

The results from both Groups I and II overlap, as the groups include the same fructans, i.e. both fructans being produced from the same bacteria, using the same conditions. Even in the situation when the results are different, it is always a fructan that is produced, i.e. a polymer consisting of the same units ( $\beta$ -2-6 vs.  $\beta$ -2,1).

Therefore, in view of the above, it is believed that applicants are entitled to an action on the merits of both Groups I and II in their full scope.

The Official Action further states that the fructans of Group III are unrelated to the method of Group I because they are not used or made by the method of Group I. However, the fructans

of Group III share the same  $\beta$  (2-1) linked and  $\beta$  (2-6) linked D-fructosyl units as recited in Groups I and II, which as discussed above are directed to the same process.

The Official Action stated that Group IV is related to Group III in that Group IV is the product made by Group III. Accordingly, the product of Group IV is also related to the product of Groups I and II in that Group IV relates to a fructan having  $\beta$  (2-6) linked D-fructosyl units.

Thus, applicants respectfully submit that the claims of Groups I-IV recite subject matter in which a search and examination of all the pending claims would not place a serious burden on the Patent Office.

In view of the above, it is believed that applicants are entitled to an action on the merits of all the pending claims in their full scope in the present application. A favorable action is accordingly respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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